IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 460 OF 2004

The State of Maharashtra .. Applicant.

V/s.

Madhur Ramchandra Bhandarkar .. Respondent.

Shri N.B.Pawaskar, Special PP for the Applicant-State.
Shri Shivade with Shri Girish Kulkarni & Ms. Rajeshree Gadhavi for Respondent.
Ms. Preti Jain, Original Complainant.

CORAM : A.M.KHANWILKAR, J.
DATED : JANUARY 28, 2005

PC :-

. Heard Shri Pawaskar, Special Public Prosecutor for the State. Ms. Preeti Jain, who has appeared in-person as well as Shri Shivade, learned counsel for the Respondent.

2. This Application, filed as Revision Application, takes exception to the order passed by the Principal Judge, Sessions Court, Greater Mumbai, dated 30th July, 2004 in Anticipatory Bail Application No. 864/2004. Although preliminary objection regarding maintainability of this Revision Application has been raised, I would still proceed to examine the

matter on merits as the revision application can always be allowed to be converted into appropriate application.

3. The case as made out by the prosecution is that the complainant -Preeti Jain was repeatedly subjected to rape on several occasions by the accused-respondent herein, since July, 1999. According to the complainant initially she agreed to keep physical relation with the accused as she was promised that she will be taken as lead heroine in the prospective films to be produced by the respondent accused. It is alleged that in January, 2000, the complainant realised that the respondent was not giving her opportunity in the new films undertaken by him, therefore, she registered protest and also indicated that she will not keep any relation with the respondent in future. However, even thereafter, it is alleged that the respondent persisted with the complainant to keep relation and as the complainant was not relenting, threatened the complainant that he will use his connections to kill her as well as her parents. Because of the threats given by the respondent, it is alleged that the complainant was compelled to accede to the demands of the respondent,

which continued from January, 2000 till December, 2003. It is further alleged that till February, 2004, the complainant was given promise that she will be given role in the new film. She was also threatened with dire consequences to dissuade her from lodging police complaint regarding the offence of rape. It is alleged that the complainant also received SMS from the accused on 15.06.2004 giving such threat. Eventually, having realised that the respondent was taking undue advantage of the earlier relations between them and has exploited and abused her, she decided to take recourse to the legal action. As a consequence, legal notice was sent in July, 2004 and thereafter, the present complaint has been lodged with the Versova Police Station on 22nd July, 2004.

4. The Respondent on becoming aware of such complaint having been filed and apprehending arrest, rushed to the Sessions Court by way of anticipatory bail application, contending that false and concocted allegations have been made by the complainant against him with ulterior purpose. The court after considering the materials which were produced before it alongwith the application and at the time of hearing, in substance has taken the view that prima

facie there is force in the stand taken by the respondent about the falsity or improbability of the allegations. It has found that the complainant was trying to exploit the situation and it appeared that she had maintained relations with two males during the same period. Reliance was placed amongst other on the correspondence between the complainant and one Suhel Khan to form this view. The learned Judge has observed that the said documents have not been disputed by the complainant. Indeed, certain observations have been made by the learned Judge to which serious exception is taken on behalf of the applicant State, to contend that the order in question cannot be sustained because those reasons have weighed with the learned Judge. Amongst other, emphasis was placed on the observations made by the learned Judge in paragraphs 20, 21, 30, 31 and 32 of the impugned order. In paragraph 20, the learned Judge has referred to the observations in the case of Forus Mistry vs. State of Maharashtra. The argument of the applicant is that this is the erroneous basis on which the court has proceeded by assuming that the complainant was promised by the respondent that he will marry her and since that promise was not kept, the complaint was being filed. On the other hand, the

allegation in the present case, if fairly read, is that the respondent repeatedly raped the complainant under threat since December, 2000 which will be covered by Section 375 (Thirdly) of I.P.C. In so far as, observations in para 21 of the order in question, the court has referred to the reported decision in the case of Pankaj Vidhyasagar Gupta vs. The State of Maharashtra, in which it is observed that it must be made distinctly clear that some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress". It is argued that inspite of having referred to the said observation, the court has held to the contrary to release the respondent on anticipatory bail although there was material to indicate the complicity of the respondent in commission of the crime and investigation was in progress. In paragraph 30, the learned Judge has observed that no satisfactory explanation is forthcoming as to why the complainant did not approach the police with the complaint and continued to have sexual relationship with the respondent. In this paragraph, the learned Judge has also observed that no SMS message was produced by the prosecution to indicate that threatening calls and SMS message on

mobile was sent to the complainant by the respondent. This position is, however, disputed. It is submitted that copy of the SMS dated 15th June, 2004 was shown to the learned Judge at the time of hearing. It is further observed in this paragraph by the learned Judge that the copies of the text, which were produced on record do not reflect any vulgar conversation between the parties. In paragraph 31, it is observed that the respondent had promised the complainant to marry in future and later on threatened her, if it was so, there was no reason to believe the respondent, if the previous cheating by assurance of role in the film is to be accepted.

5. During the course of hearing, the SMS received by the complainant on her mobile, containing the following message, is produced :-

> "If U tell any one the truth that I have raped U, I will have U killed".

This SMS is purportedly forwarded on e-mail from a public cyber cafe, showing e-mail address as "madhur bhandarkar" <mb61612001@ yahoo.com>. Police papers were produced before me to show that the authenticity

of the said SMS message having been forwarded from said e-mail address on the mobile telephone of the complainant on 15th June, 2004, has been verified and found to be correct.

6. On the above basis, it was argued that the order as passed by the learned Judge cannot be sustained. Reliance was placed on the decision of our High Court reported in 1985 CRI. L.J. 68 in the case of Miss R. Shakuntala vs. Roshanlal Agarwal & Ors. in support of the argument that the court below has committed manifest error in releasing the respondent on anticipatory bail and the same will have to be remedied in this Application.

7. After having heard the counsel appearing for the parties as well as the complainant in person and going through the record, in my opinion, the substance of the reason which has weighed with the court below in granting anticipatory bail to the respondent is that, the claim of the complainant that she was repeatedly raped under threat seems to be unfounded and unacceptable. This is so because the offence in question is allegedly committed since year 1999 but it

has not been reported till now. Even on accepting the allegations in the complaint as it is, on fair reading of the complaint it is seen that the complainant accepts that initially she consented to keep physical relation with the Respondent. That consent was given after due deliberation in July, 1999. The gravamen of the allegation is about sexual intercourse after January, 2000 till December, 2003. For this period no complaint is lodged. Except the bare words of the complainant, there is nothing to show that any threat as alleged was administered. It cannot be overlooked that the complainant is an ambitious person and intends to some how make a career in the film industry. There is contemporaneous record which was placed before the lower court as well as this court alongwith the reply affidavit, which would cast doubt about her credentials. Essentially, on this basis the lower court has approached the matter; And I see no reason to depart from that approach. The only documentary evidence that has come on record which is pressed into service on behalf of the State as well as the complainant, is the SMS message dated 15th June, 2004. Indeed, the lower court has not dealt with this SMS specifically. On reading the said SMS message, it does indicate that threat was administered to the

complainant. But this SMS is of June, 2004, of subsequent period. It is not the complainant's case that she was raped after this SMS was received so as to attract section 375 (Thirdly) of the IPC. More over, it is intriguing that inspite of passage of time, although it is stated that the investigation has progressed further, no effort has been made to find out whether the SMS sent from the stated e-mail address in the first place matches with the e-mail address of the Respondent in regular use for a reasonable period and was actually sent by using the password of the e-mail address regularly in use of the respondent. On instructions of the investigating officer, who is present in the court, the learned special public prosecutor submits that the stated e-mail address from which the offending SMS has been sent was used only for one day and that no investigation has been made on the above lines. If it is so, there is every possibility that the said e-mail address was generated by some one other than the Respondent to facilitate the sending of offending SMS message. May be for creating evidence against the Respondent. Soon thereafter, the legal notice has been sent. Accordingly, this SMS by itself cannot be the basis to proceed against the respondent on the

assumption that he had threatened the complainant or caused to do so or committed offence within the meaning of section 375 (Thirdly). Going by the complaint, as filed, the case of the complainant is that promise was given by the Respondent that he will marry her and also provide her lead role in his films and that threats were administered to her since December, 2000 because of which she subjected herself to repeated rape. However, by that time, not only the film 'Chandani' was produced and released by the respondent, but it appears that later on in December, 2003 the respondent also got married to some other woman. Inspite of all these developments, the claim of the complainant that the respondent continued to keep relations with her and abused her as mentioned in the complaint, seems to be unacceptable. The question is: whether such a claim should be readily accepted, especially when from the undisputed documents which have been pressed into service on behalf of the respondent -Exhibits 'C' to 'F', which were presented before the lower court and which formed part of the record before this court, it is possible to take the view as has been taken by the lower court. In my opinion, the view taken by the lower court relying on the said correspondence between the complainant and

one Suhel Khan that during the relevant time she had relationship with some other person, is a possible view. The events spelt out from the said correspondence and other materials filed alongwith the reply affidavit does cast doubt about the credentials of the complainant. Interestingly, even before this court the said documents have not been disputed by the complainant, who has appeared in person. The only explanation offered is that the same has nothing to do with the offence alleged against the respondent. In my opinion, therefore, no fault can be found with the view taken by the lower court, placing reliance on the said documents to hold that possibility of falsely implicating the respondent cannot be ruled out; and that is a valid consideration for granting anticipatory bail so as to protect the person from being persecuted.

8. Besides, it is rightly submitted on behalf of the respondent that before the lower court anticipatory bail application was resisted by the State only on four counts. Firstly, that the custody of the respondent will be necessary for medical examination. Secondly, that statements of witnesses who must have seen the complainant and respondent

together in Sea- Side Hotel were to be recorded. Thirdly, to make investigation regarding the SMS and of threats received by the complainant needs to be investigated in relation to the information received from the mobile service provider, which forwarded the SMS messages to the complainant on her mobile. All these can be done without insisting for custody of the respondent. It is common knowledge that all details regarding e-mail site operated by any person can be secured from the service provider, for which custody of the respondent will not be necessary. In so far as his medical examination is concerned, the respondent is willing to extend necessary co-operation in that behalf. Even the statements of the concerned witnesses can be recorded without requiring the custody of the respondent. In any case, by this time the statements have already been recorded by the investigating officer. Even investigation with regard to the SMS message dated 15th June, 2004 has been made by the investigating officer. Although, as mentioned earlier, no steps have been taken by the investigating officer to further ascertain the relevant facts and for doing so, at best the information in the form of the password and the e-mail address of the respondent in his regular use will have to be obtained, which can

be done without insisting for the custody of the respondent. The case of the respondent is that he has already been extensively interrogated by the investigating officer on three different occasions.

9. In my opinion, for the view that I have taken, it is not necessary to dwell upon in detail on all the aspects of the case especially when the investigation is in progress. Further, the order in question is passed as back as in July, 2004 and nothing is brought on record to show that the respondent has not co-operated during the investigation or abused his bail in any manner. If it is so, taking over all view of the matter, not a case to recall or set aside the order passed by the lower court, granting anticipatory bail to the respondent. Hence, rejected.

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